

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON**

JOHN MOSS, III,

Petitioner,

v.

Civil Action No. 2:09-cv-01406

**DAVID BALLARD, Warden,
Mount Olive Correctional Complex,**

Respondent.

RESPONDENT’S MOTION FOR SUMMARY JUDGMENT

The Respondent, David Ballard, Warden, by counsel, moves this Court grant summary judgment and dismiss the Petition under 28 U.S.C. § 2254 filed by John Moss, III (“Petitioner”) on the grounds that Respondent is entitled to judgment as a matter of law on all claims. As grounds for this motion, Respondent alleges the following:

1. The Petitioner has failed to rebut the presumption that the state court findings on his claims are correct as a matter of federal law; and
2. The Petitioner has failed to demonstrate that he is entitled to relief on any of his claims.

Therefore, the Respondent moves that this Court grant Respondent’s Motion for Summary Judgment and dismiss this petition with prejudice.

Respectfully submitted,

DAVID BALLARD, Warden,
Mount Olive Correctional Complex,
Respondent,

By counsel,

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL

/s/ Robert D. Goldberg

Robert D. Goldberg, Bar No. 7370
Assistant Attorney General
Attorney for Respondent
Office of the Attorney General
State Capitol Complex
Building 1, Room E-26
Charleston, West Virginia 25305-0220
Telephone: (304) 558-2021
Fax: (304) 558-0140
E-mail: robert.goldberg@wvago.gov

INDEX OF EXHIBITS

(In the interest of judicial economy and to avoid repetition, Respondent's first exhibit number is Exhibit 20. Exhibits 1 through 19 were filed with Respondent's Answer on the Limited Issue of Timeliness of the Petition and Exhaustion of Available State Court Remedies.)

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|-------------------------------|------------------------------------|
| Respondent's Exhibit 20 | Trial Transcript |
| Respondent's Exhibit 21 | Juvenile Transfer Hr'g |
| Respondent's Exhibit 22 | Suppression Hr'g (09/19/1983) |
| Respondent's Exhibit 23 | Murphy Deposition (05/17/1995) |
| Respondent's Exhibit 24 | Ted Smith Deposition (09/29/2002) |
| Respondent's Exhibit 25 | David Bing Deposition (06/05/1995) |
| Respondent's Exhibit 26 | Grand Jury Testimony (09/17/1982) |
| Respondent's Exhibit 27 | 06/10/2001 Habeas Hr'g |
| Respondent's Exhibit 28 | 01/17/2003 Habeas Hr'g |
| Respondent's Exhibit 29 | 03/03/1989 Second Trial Hr'gs |
| Respondent's Exhibit 30 | 03/19/1990 Second Trial Hr'gs |
| Respondent's Exhibit 31 | 04/13/1990 Second Trial Hr'gs |
| Respondent's Exhibit 32 | 04/16/1990 Second Trial Hr'gs |
| Respondent's Exhibit 33 | 94-Misc-663 Habeas Record |

CERTIFICATE OF SERVICE

I hereby certify that on October 29, 2010, I electronically filed the foregoing “Respondent’s Motion for Summary Judgment” together with Exhibits 20 through 33 with the Clerk of the Court using the CM/ECF system, and I hereby certify that I have mailed, by United States Postal Service, the aforesaid document to the following non-CM/ECF participant:

John Moss, III, DOC # 13734
Mt. Olive Correctional Complex
One Mountainside Way
Mt. Olive, WV 25185

/s/ Robert D. Goldberg
Robert D. Goldberg, Bar No. 7370
Assistant Attorney General
Attorney for Respondent
Office of the Attorney General
State Capitol Complex
Building 1, Room E-26
Charleston, West Virginia 25305-0220
Telephone: (304) 558-2021
Fax: (304) 558-0140
E-mail: robert.goldberg@wvago.gov